Ketua Polis Negara & Anor v Goh Ching Huat

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–23 OF 2008 (A)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), MOHD GHAZALI AND HELILIAH FCJJ
9 FEBRUARY 2011

Labour Law — Employment — Dismissal — Respondent claimed that dismissal was unlawful, unconstitutional, void and of no effect — Whether impugned letter conveying decision on dismissal of respondent flawed because it was not signed by author of letter — Whether disciplinary proceedings resulting in respondent's dismissal flawed because respondent not notified of his dismissal by disciplinary authority — Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 O 26

Disciplinary action was initiated against the respondent, a former probationary police inspector with the Royal Malaysian Police ('PDRM'), in respect of two charges as set out in the show cause letter served on him. Thereafter, pursuant to O 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 ('the General Orders') the respondent was dismissed from his service with the PDRM. Dissatisfied the respondent commenced legal action against the appellants wherein he alleged that the letter of dismissal was invalid as it was not signed by the appropriate person or authority. The respondent prayed, inter alia, for a declaration that his dismissal from the PDRM was unlawful, unconstitutional, void and of no effect. The High Court judge found the respondent's dismissal based on the first charge to be unlawful because the said charge could not be sustained. However, the trial judge found that there was enough material for the disciplinary authority ('the DA') to find the respondent guilty of the second charge and dismissed the respondent's action. The respondent then appealed to the Court of Appeal. The Court of Appeal's decision focused on the point that the letter conveying the decision on the dismissal of the respondent ('the impugned letter') was a very important letter and that since it was not signed by its author the dismissal of the respondent was not properly done. Based on this point the Court of Appeal allowed the respondent's appeal with costs. Dissatisfied with the decision of the Court of Appeal the appellants obtained leave to proceed with the present appeal that posed two issues for the court's consideration, namely, whether the impugned letter was flawed because it was not signed by the author of the letter; and whether the disciplinary proceedings resulting in the respondent's dismissal were flawed because the respondent was not notified of his dismissal by the DA.

Held, allowing the appeal with costs here and below:

(1) On a careful reading of O 26 of the General Orders and art 135(2) of the

Federal Constitution it was found that there was no specific requirement for the DA to sign the impugned latter conveying its decision to the respondent. At best the object of the impugned letter was only communicative and could not be considered as an integral part of the disciplinary proceeding of the DA, which decided to dismiss the respondent. As such, it did not matter who eventually signed it and the Court of Appeal therefore erred in giving too much importance on the signature in the impugned letter without considering the clear provisions of the applicable law (see paras 21–22 & 24).

(2) There was no requirement in O 26 of the General Orders that the decision of the DA had to be communicated only by it to the appellant (see para 28).

(3) The issues of condonation and miscarriage of justice, as raised by the respondent, were not within the ambit of the questions posed before this court. In any case the Court of Appeal had already considered these issues to be without merits and there was no reason to disagree with such a conclusion (see para 32).

[Bahasa Malaysia summary

Tindakan disiplin dimulakan terhadap responden, bekas inspektor polis percubaaan dengan Polis di-Raja Malaysia ('PDRM'), berkaitan dua tuduhan seperti yang ditetapkan di dalam surat tunjuk sebab yang diserahkan kepadanya. Selepas itu, berikutan A 26 Perintah-Perintah Am Pegawai Awam (Kelakuan dan Disiplin) (Bab D) 1980 ('Perintah-Perintah Am') responden ditamatkan daripada perkhidmatannya dengan PDRM. Tidak puas hati, responden memulakan tindakan undang-undang terhadap perayu-perayu di mana dia mendakwa bahawa surat pembuangan kerja tersebut tidak sah kerana ia tidak ditandatangani oleh seseorang yang wajar atau pihak berkuasa. Responden memohon, antara lain, untuk perisytiharan bahawa pembuangan kerjanya dengan PDRM tidak sah, tidak berperlembagaan, batal dan tidak berkesan. Hakim Mahkamah Tinggi mendapati pembuangan kerja responden berdasarkan tuduhan pertama tidak sah kerana tuduhan tersebut tidak boleh dikekalkan. Walau bagaimanapun, hakim perbicaraan mendapati bahawa terdapat material yang cukup untuk pihak berkuasa disiplin ('PBD') mendapati responden bersalah terhadap tuduhan kedua dan menolak tindakan responden. Responden kemudiannya merayu ke Mahkamah Rayuan. Keputusan Mahkamah Rayuan bertumpu kepada poin bahawa surat yang menyampaikan keputusan mengenai pembuangan kerja responden ('surat tersebut') adalah surat yang sangat penting dan memandangkan ia tidak ditandatangani oleh penulisnya pembuangan kerja responden tidak dibuat secara betul. Berdasarkan poin ini Mahkamah Rayuan membenarkan rayuan responden dengan kos. Tidak puas hati dengan keputusan Mahkamah Rayuan perayu-perayu memperoleh izin untuk meneruskan dengan rayuan ini yang membangkitkan dua isu untuk pertimbangan mahkamah iaitu sama ada surat

tersebut adalah cacat kerana ia tidak ditandatangani oleh penulis surat; dan sama ada prosiding disiplin yang mengakibatkan pembuangan kerja responden adalah cacat kerana responden tidak diberitahu mengenai pembuangan kerjanya oleh PBD.

Diputuskan, membenarkan rayuan dengan kos di mahkamah ini dan Mahkamah Rayuan:

(1) Atas pembacaan teliti A 26 Perintah-Perintah Am dan perkara 135(2) Perlembagaan Persekutuan didapati bahawa tidak terdapat keperluan spesifik untuk PBD menandatangani surat tersebut yang menyampaikan keputusannya kepada responden. Paling tidak pun, objek surat tersebut hanya untuk berkomunikasi dan tidak boleh dipertimbangkan sebagai bahagian penting prosiding disiplin PBD, yang mana memutuskan untuk membuang responden. Oleh itu, tidak menjadi masalah siapa yang akhirnya menandatanganinya dan Mahkamah Rayuan oleh itu tersilap di dalam menekankan kepentingan tandatangan di dalam surat tersebut tanpa mempertimbangkan peruntukan-peruntukan jelas undang-undang yang beraplikasi (lihat perenggan 21–22 & 24).

(2) Tidak terdapat keperluan di dalam A 26 Perintah-Perintah Am bahawa keputusan PBD mesti diberitahu hanya olehnya kepada perayu (lihat perenggan 28).

(3) Isu-isu membiarkan sesuatu berlaku dan ketidakadilan, seperti yang dibangkitkan oleh responden, bukan dalam lingkungan soalan-soalan yang dibangkitkan di hadapan mahkamah ini. Walau bagaimanapun Mahkamah Rayuan telah mempertimbangkan isu-isu ini sebagai tidak bermerit dan tidak ada sebab untuk tidak bersetuju dengan keputusan sedemikian (lihat perenggan 32).]

Notes

For cases on dismissal, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 948–1000.

Cases referred to

Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114, SC (refd)

Goh Ching Huat v Ketua Polis Negara & Anor [2008] 1 MLJ 83, CA (refd)

Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor [2002] 3 MLJ 714, CA (refd)

Legislation referred to

Federal Constitution art 135(2)

Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 O 26

Public Officers (Conduct and Discipline) Regulations 1993 reg 53(1)

Appeal from: Civil Appeal No A-01–86 of 1998 (Court of Appeal, Putrajaya)

Suzana Atan (Senior Federal Counsel, Attorney General's Chambers) for the appellants.
G Subramaniam Nair (Ebrina Zubir with him) (Maniam Nair & Co) for the respondent.

Richard Malanjum CJ (Sabah and Sarawak) (delivering judgment of the court):

[1] This is an appeal by the Ketua Polis Negara and Kerajaan Malaysia ('the appellants') against the decision of the Court of Appeal given on 17 September 2007 allowing with costs the appeal by Goh Ching Huat ('the respondent') in connection with his dismissal from the Royal Malaysian Police Force in 28 December 1992.

[2] On 3 November 2008 this court granted leave to the appellants to appeal on two questions:

(a) whether the disciplinary proceedings resulting in the respondent's dismissal is flawed merely because the letter notifying the termination is signed by someone other than the disciplinary authority; and

(b) whether the disciplinary proceedings resulting in the respondent's dismissal is flawed merely because the termination is not notified by the disciplinary authority.

[3] Briefly the respondent was a former probationary police inspector with the Royal Malaysian Police ('PDRM').

[4] A disciplinary action was initiated against him with the service of a show cause letter dated 14 October 1992 issued by the Ketua Polis Negara on why he should not be dismissed pursuant to O 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 in respect of two charges. He was also informed of his right to make representations in answer to the two charges in the show cause letter.

[5] By a letter 4 November 1992 the respondent presented his representations in answer to the charges made against him. His reply was qualified with an assertion that he could only give his answer in part and based on his recollection since he did not have in his possession the relevant and important information or any document.

[6] On 28 December 1992 vide a letter of even date the respondent was dismissed from the service with the PDRM.

[7] Dissatisfied the respondent commenced legal action praying, inter alia, for a declaration that his dismissal from the PDRM was unlawful, unconstitutional, void and of no effect. The respondent alleged that the letter of dismissal was invalid as it was not signed by the appropriate person or authority.

[8] After a full hearing in the High Court the learned trial judge found that on the first charge against the respondent it could not be sustained and thus concluded that his dismissal based on it was unlawful.

[9] However, in respect of the second charge the learned trial judge found that the charge was not erroneous or false as argued by the respondent. The learned trial judge went on to determine that it was clear that there were enough materials for the disciplinary authority to find the respondent guilty of the second charge. Overall the action of the respondent was thus dismissed on 7 August 1998 as learned trial judge held that the relief sought could not be granted in view of his conclusion on the second charge.

[10] The reasons given by the learned trial judge in coming to his finding for the second charge are thus (briefly):

(a) that 'it was entirely for the disciplinary committee to decide on the facts presented before it whether' the respondent 'had exculpated himself'. The court's role 'in judicial review is basically supervisory rather than appellate in nature and unless the disciplinary committee had committed any procedural impropriety or had arrived at the decision illegally or irrationally the court would not be minded to review such a decision';

(b) that the answer required of the respondent 'with respect of the second charge, it is clear, did not require any reference to his diary'. Therefore the respondent's allegation 'that he was not in possession of his diary which he alleged had been kept' by the Ketua Polis Negara, 'would not apply as it would in the first charge such that it could not be said that' the respondent 'had not been accorded a fair hearing';

(c) that 'the disciplinary authority had not committed any procedural improprieties or acted irrationally or illegally in finding' the respondent 'guilty and dismissing him'; and

(d) that the assertion that the 'letter of dismissal was forged, it is clear that it is not true. DW2, Dato' Hj Ahmad Regib bin Hj Mohd Salleh had testified that the letter was signed on his behalf by his deputy, ACP Dato' Mohd Yussuf bin Said as he was away on leave at that time. There is no

law to say that he cannot authorise another officer to sign on his behalf. The object of the letter was merely communicative. It was merely to inform' the respondent that 'he had been dismissed'.

[11] The respondent was dissatisfied with the dismissal of his action and appeal to the Court of Appeal.

[12] The Court of Appeal, while finding no merits in the other contentions of the respondent, allowed his appeal with costs. The decision focused only on one point, namely, that the letter (impugned letter) conveying the decision on the dismissal of the respondent was not signed by its author. This is what the Court of Appeal said in *Goh Ching Huat v Ketua Polis Negara & Anor* [2008] 1 MLJ 83 at pp 99–100:

> We are of the view that the letter informing the plaintiff of his dismissal is an important letter. This letter affects the plaintiff's right to employment. We agree with learned counsel for the plaintiff that without this letter, the plaintiff is deemed to be still in the service of the Royal Police Force. The evidence shows that DW2 never signed this letter and it was his evidence that it was his deputy, Dato' Mohd Yussuf bin Said, who signed it. Surprisingly the said Dato' Mohd Yussuf was not called to give evidence to confirm that he was the one who signed that letter. DW2 said he was familiar with the handwriting and signature of Dato' Mohd Yussuf. In that letter the only handwriting that could be seen are the letters 'f' and 'AOL' and also the signature. Since Dato' Mohd Yussuf did not give evidence in court that he was the one who signed the letter, it could not be ascertained that he was the one who signed it. There was nothing in the letter to indicate that he was the one who signed it because his name never appeared in that letter. DW2 gave evidence that he was familiar with the handwriting and the signature of Dato' Mohd Yussuf. But that was all. DW2 did not give evidence that he saw the said Dato' Mohd Yussuf signing that letter and we believe that he could not do so because he was on leave. DW2 also did not say that Dato' Mohd Yussuf had told him that he had signed the letter on behalf of DW2. It is clear to us that there is no concrete evidence that the letter was signed by an authorised officer authorised by the Deputy IGP to convey the decision of the Deputy IGP to dismiss the plaintiff.
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> Perusing the letter, it is clear to us that the decision of the Deputy IGP was conveyed to the writer (DW2). How could the decision be conveyed to DW2 when he was on leave. We could not find any good reason why the letter purportedly to be written by DW2 be delegated to his deputy to sign it. Did the Deputy IGP conveyed his decision to DW2 or his deputy. In our view, if the decision was conveyed to Dato' Mohd Yussuf, it is more appropriate and proper that the letter be issued in the name of Dato' Mohd Yussuf rather that the name of DW2. Bearing in mind that this letter is a very important letter, it is only appropriate and proper that the letter bears the name and his status.
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> For the reasons above we find that the dismissal of the plaintiff was not properly done. We are therefore of the view that the appeal should be allowed with costs here and below.

[13] Dissatisfied with the decision of the Court of Appeal the appellants now posed the above two questions for our consideration.

QUESTION (a)

[14] It is not in dispute that the impugned letter conveying the decision to dismiss the respondent from service was not signed by the person (DW2) who was purported to have written it. The issue is whether such failure has caused the disciplinary proceedings which resulted in the dismissal of the respondent to be flawed.

[15] In determining the issue it is essential to consider whether there was in fact a failure to comply with the stipulated procedure by the disciplinary authority in coming to its decision to dismiss the respondent.

[16] To begin with, it is clear that there was no specific complaint on the procedure or process adopted by the disciplinary authority. As such it is unnecessary to conduct a review on whether O 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 had been observed.

[17] In any event the learned trial judge found that 'the disciplinary authority had not committed any procedural improprieties or acted irrationally or illegally in finding' the respondent 'guilty and dismissing him'.

[18] The remaining question is therefore whether the impugned letter should be considered as an integral part of the disciplinary proceedings which decided to terminate the service of the respondent with PDRM. Put in another way, the issue is whether O 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 or any other the applicable law stipulates that it is the disciplinary authority itself and no other which must sign the impugned letter to convey the result of its the disciplinary proceedings.

[19] Order 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 states:

> (1) Where it is represented to, or found by, the Appropriate Disciplinary Authority that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the provisions of the following paragraphs shall apply.
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> (2) The Appropriate Disciplinary Authority shall, after considering all the available information in its possession that there is a prima facie case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on

which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing within a period of not less than fourteen days from the date of receipt of the letter a representation containing grounds upon which he relies to exculpate himself. A

(3) If after consideration of the said representation, the Appropriate Disciplinary Authority is of the opinion that the unsatisfactory work or conduct of the officer is not serious enough to warrant dismissal or reduction in rank, the Disciplinary Authority may impose upon the officer such lesser punishment as it may deem fit. B

(4) If the officer does not furnish any representation within the specified time, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Appropriate Disciplinary Authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer. C

(5) Where the Appropriate Disciplinary Authority considers that the case against the officer requires further clarification, it may appoint a Committee of Inquiry consisting of not less than two senior Government officers who shall be selected with due regard to the standing of the officer concerned and to the nature and gravity of the complaints which are the subject of the inquiry, provided that an officer lower in rank than the officer who is the subject of the inquiry or the officer's Head of Department shall not be selected to be a member of the Committee. D

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(6) The officer shall be informed that, on a specified day, the question of his dismissal or reduction in rank will be brought before the Committee and that he will be allowed and if the Committee shall so determine, shall be required to appear before the Committee and exculpate himself.

(7) If witnesses are examined by the Committee, the officer shall be given an opportunity to be present and to question the witnesses on his own behalf and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto. F

(8) The Committee may, permit the Government or the officer to be represented by an officer in the public service or, in exceptional cases, by an advocate and solicitor and may at any time, subject to such adjournment as is reasonably necessary to enable the officer to present his case in person, withdraw such permission: G

Provided that where the Committee permits the Government to be represented, it shall also permit the officer to be similarly represented. H

(9) If, during the course of the inquiry, further grounds for dismissal are disclosed, and the Appropriate Disciplinary Authority thinks fit to proceed against the officer upon such grounds, the officer shall be furnished with a written statement thereof and the same steps shall be taken as are prescribed above in respect of the original ground. I

A (10) The Committee having inquired into the matter, shall make a report to the Appropriate Disciplinary Authority. If the Disciplinary Authority considers that the report is not clear in any respect or that further inquiry is desirable, the matter may be referred back to the Committee for further inquiry and report.

(11) If, upon considering the report of the Committee the Appropriate Disciplinary B Authority is of the opinion —

(a) that the officer should be dismissed or reduced in rank, it shall forthwith direct accordingly;

(b) that the officer does not deserve to be dismissed or reduced in rank, but deserves some lesser punishment, it may inflict upon the officer such C lesser punishment as it may deem fit; or

(c) that the proceedings disclose sufficient grounds for requiring him to retire in the public interest, it shall recommend to the Government accordingly. The question of pension will be dealt with under the Pensions Act.

D

[20] Article 135(2) of the Federal Constitution stipulates:

> No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard: …

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[21] On careful reading of O 26 above and the relevant provision of the Federal Constitution we do not find any specific requirement for the disciplinary authority to sign the impugned letter conveying its decision to the respondent.

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[22] As such we do not think the impugned letter could be considered as an integral part of the disciplinary proceeding of the disciplinary authority which decided to dismiss the respondent.

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[23] We are fortified in our view by what was said by His Lordship Jemuri Serjan CJ (Borneo) in *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114 at pp 120–130:

H > Lest we forget in that case His Lordship was dealing with judicial review at common law and the passage above does not apply to a case regulated by statutes or subsidiary legislation which have legislative effect.
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> ...

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Similarly, in this case, we have examined the relevant provisions of the General Orders 1980 (Chapter D), and it is beyond dispute that these provisions have been assiduously followed by the respondent, and having regard to all the authorities cited earlier on an oral hearing or inquiry under the circumstances of this case was not justified. *In dealing with General Orders 1980 (Chapter D) we remind ourselves that we are dealing with general orders that have legislative effect and we must guard ourselves against adding words into them which were never intended*. In this regard, we found support in the passage of the judgment of Barwick CJ in *Twist v Randwick Municipal Council* (1976) 136 CLR 106 at p 110:

... if the legislation has made provision for that opportunity to (to be heard) to be given to the subject before his person or property is so affected, the court will not be warranted in supplementing the legislation, even if the legislative provision is not as full and complete as the court might think appropriate. Thus, if the Legislature has addressed itself to the question whether an opportunity should be afforded the citizen to be relevantly heard and has either made it clear that no such opportunity is to be given or has, by its legislation, decided what opportunity should be afforded, the court being bound by the legislation as much as is the citizen, has no warrant to vary the legislative scheme. (Emphasis added.)

[24] We are therefore inclined to agree with the learned trial judge that at best the object of the impugned letter was only communicative. It did not matter who eventually signed it. And there could not be any forgery as DW2 did not make any assertion that such happening while giving his evidence. The Court of Appeal therefore erred in giving too much importance on the signature in the impugned letter without considering the clear provisions of the applicable law.

[25] Our answer to question (a) therefore is in the negative.

[26] Lest it might be overlooked, although not applicable in this case but merely for comparison, under the Public Officers (Conduct and Discipline) Regulations 1993, reg 53(1) clearly specifies the requirement of who is to communicate any decision of the disciplinary authority with the following words:

53(1) Letters and other correspondence between the appropriate Disciplinary Authority and the officer who is subject to disciplinary action shall be signed by the Chairman of the appropriate Disciplinary Authority or by any member of the Disciplinary Authority on behalf of the Chairman.

A 53(2) Notwithstanding the provisions of subregulation (1) where the Disciplinary Authority is a Service Commission established under Part X of the Federal Constitution, letters and other correspondence required to be signed may be signed by the Secretary of the Service Commission concern.

B QUESTION (b)

[27] For the same reason in coming to our conclusion for question (a) and the negative answer thereof we also answer question (b) in the negative.

C **[28]** As we have stated above there is also nothing in the O 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 requiring that a decision of the disciplinary authority must be notified only by it to the subject of a disciplinary action.

D **[29]** We are thus inclined to agree with the submission of learned counsel for the appellants citing the case of *Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor* [2002] 3 MLJ 714 at p 717 which held that:

E We agree with the learned judge that there is no requirement in Chapter D of the 1980 General Orders, or for that matter, in any law, that such a decision must be communicated to the appellant (per Hamid Mohamad JCA (as he then was)).

OTHER ISSUES

F **[30]** Learned counsel for the respondent urged this court that the dismissal punishment imposed upon the respondent was too harsh and not proportional to the breach of discipline (he only went out of the camp for a dinner) in which he was found to have committed.

G **[31]** With respect, before us are only two questions for our consideration. We have answered them both in the negative. Further, such assertion or relief was not pleaded in the statement of claim of the respondent and thus not dealt with by the learned trial judge.

H **[32]** In respect of the other points raised in the submission of learned counsel for the respondent such as the issues of condonation and miscarriage of justice they are not within the ambit of the questions posed before us. Further, it is clear in the judgment of the Court of Appeal that it had considered the points I raised against the judgment of the High Court and had found them to be without merits. We have no reason to disagree with such conclusion.

CONCLUSION

[33] Accordingly we allow this appeal with costs here and below. We set aside the judgment of the Court of Appeal. The action of the respondent is therefore dismissed as held by the learned trial judge.

Appeal allowed with costs here and below.

Reported by Kohila Nesan